

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/693719
Applicant : Douglas Swarts
Filed : 10/24/2003
TC/A.U. : 3753
Examiner : CHAMBERS, A MICHAEL
Confirmation No. : 1572

Docket No. : 006386.P002
Customer No. : 40418

Title : Waste evacuation system for a vehicle

COMMUNICATED VIA EFS TO USPTO on March 13, 2007

RESPONSE TO Notification of Non-Compliant Appeal Brief

Sir:

In response to the Notification of Non-Compliant Appeal Brief mailed
03/06/2007, Applicant responds as follows:

Improperly Signed Appeal Brief

Attorney for Applicant submits herewith a copy of the Office
Communication, a copy of the original improperly signed page 28, and a
replacement page 28.

Clarification and Replacement Page

Attorney for Applicant submits herewith a copy of the original page 3, and a replacement page 3. Accordingly, Applicant does not consider Consolidated case # 5-04-cv-04801-JW to be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

The Examiner is invited to call Alan Heimlich at 408 253-3860 if there remain any issues. Cleartext email communication is authorized.

Respectfully submitted,

Heimlich Law

03/13/2007

Date

/s/48808Alan Heimlich

Customer No. 40418

Attorney for Applicant

5952 Dial Way
San Jose, CA 95129

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UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,719	10/24/2003	Douglas R. Swarts	006386.P002	1572
40418	7590	03/06/2007	EXAMINER	
HEIMLICH LAW 5952 DIAL WAY SAN JOSE, CA 95129			ART UNIT	PAPER NUMBER

DATE MAILED: 03/06/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/693,719	Applicant(s) SWARTS, DOUGLAS R.	
	Examiner Eric Keasel	Art Unit 3753	

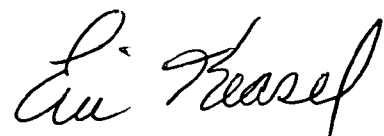
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 November 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

The brief does not have a proper signature (see MPEP 502.02). In the Related Appeals and Interferences section, it is unclear if appellant considers Consolidated case #5-04-cv-04801-JW to be a related proceeding or not. Clarification is required. It does not appear that appellant understands what should be included in the evidence appendix (see MPEP 1205.02).



Eric Keasel
SPE
Art Unit: 3753

ORIGINAL PAGE 28

CONCLUSION

Applicant submits that the rejection of dependent claims not specifically addressed, are addressed by Applicant's arguments to the independent claims on which they depend.

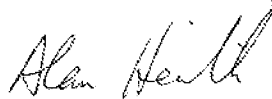
Applicant respectfully submits that the appealed claims in this application are patentable, and requests that the Board of Patent Appeals and Interferences direct allowance of all claims.

Respectfully submitted,

Heimlich Law

11/14/2006

Date



Digitally signed by Alan
Heimlich
DN: CN = Alan Heimlich, C
= US, O = Heimlich Law

Alan Heimlich / Reg 48808

Attorney for Applicant(s)

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ORIGINAL PAGE 3

I. REAL PARTY IN INTEREST

The real party in interest of Appellant is Phase Four Industries, Incorporated.

II. RELATED APPEALS AND INTERFERENCES

1) There are no prior or pending interferences. (Appellant has however requested an interference in a continued application number 10/921125. The USPTO has not declared an interference at this time.)

2) There are no pending appeals before the USPTO.

3) There is no judicial proceeding related to Appellant's instant application or related applications. (However, Appellant has filed suit in the California Northern Federal District (Consolidated case # 5-04-cv-04801-JW) against the Assignee of the reference Schoellhorn. Appellant has not provided any court documents as the action, while among other things, has counter claims of patent infringement against a product, it has no bearing on the instant application. Should the Board desire a copy of the massive court documents, Appellant will provide such upon request.)

III. STATUS OF THE CLAIMS

Claims 1-24 are pending in the application. No claims have been allowed.

All claims are on appeal.

All claims have been rejected by the Examiner as follows.

Claims 1-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Schoellhorn et al. (US Patent No. US 6,607,009 B2) ("Schoellhorn").

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